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January 16, 2004

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JAN 16 2004

PUBLIC SERVICE  
COMMISSION

Mr. Thomas M. Dorman  
Executive Director  
Public Service Commission  
211 Sower Boulevard  
P.O. Box 615  
Frankfort, KY 40602

RE: AT&T Broadband vs. ALLTEL Kentucky and Kentucky ALLTEL  
Docket No. 2003-00023

Dear Mr. Dorman:

Enclosed please find the Post Hearing Reply Brief filed on behalf of ALLTEL. An original and eleven (11) copies are enclosed. Please file-stamp the extra copy and return it to me in the self-addressed, pre-stamped envelope I have enclosed for your convenience. ✓ *SA*

Thank you for your cooperation in this matter. Please do not hesitate to contact me with any questions you may have.

Sincerely,

WYATT, TARRANT & COMBS, LLP

*Noelle M. Holladay*

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Enclosure

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COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

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AT&T BROADBAND PHONE OF )  
KENTUCKY, LLC )  
COMPLAINANT )

VS )

ALLTEL KENTUCKY, INC. AND )  
KENTUCKY ALLTEL, INC. )  
RESPONDENTS )

CASE NO. 2003-00023

**POST HEARING REPLY BRIEF OF**  
**ALLTEL KENTUCKY, INC. AND**  
**KENTUCKY ALLTEL, INC.**

Filed: January 16, 2004

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### **THE INTERCONNECTION ISSUES**

ALLTEL Kentucky, Inc. ("ALLTEL Kentucky") is filing this Post Hearing Reply Brief as the initial brief of AT&T Broadband Phone of Kentucky, LLC ("AT&T Broadband") confuses the issues and facts in this matter in several respects. AT&T Broadband misrepresents both that the parties' Interconnection Agreement requires ALLTEL Kentucky to bear AT&T Broadband's costs and that ALLTEL Kentucky is denying it indirect interconnection. AT&T Broadband further misleads that this dispute will have "significant consequences as to when and how competition for local telephone service will take place in the Shepherdsville market." (AT&T Brief, page 5.) It also attempts to confuse this case by attempting to make this appear to be a single point of interconnection ("POI") issue, which it is not.

Undoubtedly, ALLTEL Kentucky is *not* denying AT&T Broadband indirect (or direct) interconnection. Further, the dispute in this proceeding *cannot* be said to have any significant effect on competition as AT&T is currently able to provide service in ALLTEL Kentucky territory and as it is both feasible and economical for AT&T Broadband to serve customers in ALLTEL Kentucky territory even if it pays to transport traffic to its Louisville switch. Finally, this case is not about a single POI in the LATA, as AT&T Broadband itself admits that it has not been denied a single point of interconnection with ALLTEL Kentucky on ALLTEL Kentucky's network; however, it is not a LATA-wide network.

- A. This case is not a "single-POI-per-LATA" case as AT&T Broadband suggests.  
AT&T Broadband acknowledges it is being provided one point of  
interconnection with ALLTEL Kentucky, and ALLTEL Kentucky does not have  
a LATA-wide network.

The fact that AT&T Broadband is lawfully required to bear any expense of transport outside of ALLTEL Kentucky's network does not mean that AT&T Broadband is being denied a single point of interconnection ("POI") as AT&T Broadband would have this Commission believe. AT&T Broadband's own witness admitted that ALLTEL Kentucky is offering to interconnect with AT&T Broadband at a single POI on ALLTEL Kentucky's network and therefore to allow AT&T Broadband to exchange traffic with all of ALLTEL Kentucky's interconnected local network. (*See*, Transcript of Sered Examination, page 27.)

While this Commission and several other state commissions have been presented "single-POI-per-LATA" cases involving CLECs and the LATA-wide networks of Bell Operating Companies ("BOCs"), the facts of this case are significantly different as ALLTEL Kentucky does not have a LATA-wide network. (Transcript of Sered Examination, page 31, lines 22-25; page 32, line 1.) But again, even AT&T Broadband agrees that under any of ALLTEL Kentucky's proposed interconnection methods (direct or indirect), AT&T Broadband will have a single POI in the LATA with ALLTEL Kentucky. (*See*, Transcript of Sered Examination, page 27.) Therefore, this case is not about a "single-POI-per-LATA" but is more accurately about whether a CLEC can select a POI anywhere outside of the ILEC's network forcing the ILEC to bear the costs of transporting its traffic to that POI outside of its network and certificated territory.

The Public Service Commission of New York ("New York Commission") decided the issue in its *Proceeding on Motion of the Commission Pursuant to Section 97(2) of the Public Service Law to Institute an Omnibus Proceeding to Investigate the Interconnection Arrangements Between Telephone Companies*. (See, Order Establishing Requirements for the Exchange of Local Traffic, Case 00-C-0789, Issued and Effective December 22, 2000.) ("New York Order") Deciding this issue in favor of the ILECs, the New York Commission found:

As previously noted, Independents are currently responsible for bringing meet-point facilities to their borders only, the long-standing arrangement in place today for trunks used in the provision of local calling between the Independents and Verizon. Because Independent responsibility is limited to delivering traffic to its service area borders, CLECs must either provide their own interconnection facilities or lease facilities to the meet-point. With this obligation placed on CLECs, no unique costs would be incurred by the Independents in transporting calls to CLECs. (Emphasis added.) (New York Order, page 6.)

The New York Commission, as should the Kentucky Commission, held that "CLECs must make arrangements for interconnection facilities to a meet-point designated as the Independent Telephone Company boundary" and that "Independent Telephone Companies are responsible for delivering traffic to their own service area borders." (New York Order, page 9.)

**B. AT&T Broadband is not being denied indirect interconnection. Neither placing the POI on ALLTEL Kentucky's network nor requiring AT&T Broadband to bear the transport costs outside of ALLTEL Kentucky's network makes the parties' arrangement "direct" interconnection.**

AT&T Broadband alleges, incorrectly, that ALLTEL Kentucky is refusing to provide indirect interconnection all together. (AT&T Broadband Brief, page 23.) This allegation is unfounded, and in fact, as attested to by AT&T Broadband's own witnesses, ALLTEL Kentucky is not denying AT&T Broadband indirect interconnection through the BellSouth tandem. Quite the contrary, AT&T Broadband is currently receiving interconnection through the BellSouth tandem. (AT&T Broadband Brief, page 7; Transcript of Rejba Examination, page 139, line 12.)

Also remarkable is AT&T Broadband's baseless allegation that if it must pay for transporting traffic through the BellSouth tandem to and from a designated POI on the ALLTEL Kentucky network, that it is thereby being forced to "directly" connect to ALLTEL Kentucky. (AT&T Broadband Brief, pages 4-5.) In particular, AT&T Broadband mischaracterizes the indirect interconnection dispute as follows:

[W]hether language in the Shepherdsville Interconnection Agreement allows AT&T Broadband to exchange local traffic with ALLTEL in Shepherdsville "indirectly" through the BellSouth tandem discussed above (with the originating party being responsible for paying BellSouth's transit fees), or *whether AT&T Broadband must "directly interconnect" with ALLTEL by installing or leasing additional dedicated trunks between its Louisville switch and at least one of ALLTEL's three Shepherdsville switches*. (Emphasis added.) (AT&T Broadband Brief, pages 4-5.)

This allegation is simply untrue. If the parties exchange traffic through the BellSouth tandem, then regardless of which party pays the transport for transiting the BellSouth network or whether BellSouth absorbs such costs, the resulting arrangement is indirect interconnection. For example, even if the POI were to be placed at AT&T Broadband's own Louisville switch, the arrangement would still be indirect interconnection as the parties would still be exchanging traffic by way of the BellSouth tandem. Thus, it is not a

matter of whether AT&T Broadband will receive indirect interconnection (provided that AT&T Broadband or BellSouth bears the costs outside of ALLTEL Kentucky's network), it is only a matter of AT&T Broadband having to pay the transport costs outside of ALLTEL Kentucky's network.

The costs of transporting traffic outside of ALLTEL Kentucky's network would be new costs that are not currently borne by ALLTEL Kentucky customers. ALLTEL Kentucky is not a toll provider, and it has no relationship with any other carrier that requires it to pay to have traffic carried outside of its network. All other traffic exchanged with ALLTEL Kentucky is via its meet-point with BellSouth or by direct connection to ALLTEL Kentucky's network.

AT&T Broadband even suggests that ALLTEL Kentucky should pay to transport the traffic to the BellSouth tandem because, it argues, ALLTEL Kentucky's network extends all the way to the BellSouth tandem (a notion that was not even supported by AT&T Broadband's own witness). (AT&T Broadband Brief, page 5.) AT&T Broadband questions "where [does] ALLTEL's 'network' really end." (*Id.*) To answer this question AT&T Broadband need only read the testimony of its own witness at the hearing who agreed that the BellSouth tandem is clearly outside of ALLTEL Kentucky's network. (Transcript of Sered Examination, page 25, lines 14-21.) Thus, AT&T Broadband resorts to fabrication and accuses ALLTEL Kentucky of "an erroneous assertion" that ALLTEL Kentucky's network ends at the edge of its local exchange boundary in Shepherdsville. (AT&T Broadband Brief page 5). Indeed, it is AT&T Broadband that makes the "erroneous assertion" as the record clearly demonstrates that ALLTEL Kentucky's



network ends at the edge of its local exchange boundary where it has a meet-point with BellSouth. (Transcript of Hughes Examination, page 202, lines 13-21.)

Based on the evidence in this matter (much of which was presented by AT&T Broadband's own witnesses), AT&T Broadband is not being denied indirect interconnection through the BellSouth tandem. Further, as between AT&T Broadband (who chose to locate its switch in Louisville) and ALLTEL Kentucky who does not transport the traffic of its own customers beyond its network, AT&T Broadband should be made to pay the transport costs of traffic outside of ALLTEL Kentucky's network which ends at its territorial boundary. Again, doing so does not in any way mean that AT&T Broadband is being denied indirect interconnection.

**C. The Interconnection Agreement does not require ALLTEL Kentucky to bear the costs of transporting its originated traffic to a point selected by AT&T Broadband outside of ALLTEL Kentucky's network.**

AT&T Broadband alleges that the Interconnection Agreement requires ALLTEL Kentucky to pay transport costs beyond ALLTEL Kentucky's network. (AT&T Broadband Brief, page 9.) In order to reach AT&T Broadband's conclusions, the provisions of the Interconnection Agreement on which AT&T Broadband relies must be read wholly out of context, and much of the provisions must be ignored. (See, Transcript of Hughes Examination, page 186, lines 23-25.) In reading the Interconnection Agreement as a whole, as must be done with any contractual document, it is obvious that indirect interconnection, like direct interconnection, is only one type of interconnection

that the parties *may* choose to employ and that ALLTEL Kentucky agreed to pay transport costs only within its service area.

AT&T Broadband misleads the Commission and distorts the record by arguing that ALLTEL Kentucky is attempting to use the Interconnection Agreement to require third party providers to locate their switches in ALLTEL Kentucky's area. (AT&T Broadband Brief, page 14.) The record simply does not support such an accusation. Yet, AT&T Broadband refers to this alleged interpretation as the "proverbial 'poison pill' for avoiding 'indirect interconnection.'" (*Id.*) There is no justification for this statement in the record. What the record does in fact reflect is that a thorough reading of the Interconnection Agreement demonstrates that if AT&T Broadband desired to utilize a third party provider whose switch did happen to be located in ALLTEL Kentucky's territory, then that option would be available to the parties as one form of interconnection. (Transcript of Hughes Examination, page 172, lines 15-23; page 177, lines 6-12; page 178, lines 23-24; page 180, lines 1-5.) There is no evidence whatsoever that ALLTEL has demanded or even suggested that AT&T Broadband would be denied indirect interconnection on the basis that there was no third party provider switch located in ALLTEL Kentucky's territory.

This lack of evidence does not stop AT&T Broadband. It insists that another ILEC, including BellSouth, would not deploy a tandem in ALLTEL Kentucky's local exchange territory and that this somehow fatally precludes indirect interconnection under the Interconnection Agreement. (AT&T Broadband Brief, page 16.) This statement either demonstrates AT&T Broadband's lack of understanding of the fact that ILECs operate in different territories and do not have authority to install switches in each other's

territory or another attempt to confuse the record. A CLEC or new entrant can install a switch within the ILEC's territory, and such can occur in ALLTEL Kentucky's territory. (Transcript of Hughes Examination, page 184, lines 24-25; page 185, lines 1-4.) For example, within the territory of Kentucky ALLTEL at least three or four CLECs have installed switches through which a third carrier would be able to interconnect indirectly with Kentucky ALLTEL in Lexington. By way of further example, a CLEC could indirectly interconnect with BellSouth by way of AT&T Broadband's Louisville switch. Therefore, efforts by AT&T Broadband to render §2.2 of the Interconnection Agreement meaningless are unsuccessful.

The testimony prefiled and presented at the hearing as well as a plain reading of the Interconnection Agreement proves unequivocally that *ALLTEL Kentucky did not agree to allow AT&T Broadband to dictate the method of interconnection and then to force ALLTEL Kentucky to pay for that choice.*

**D. This dispute does not impact competition as AT&T Broadband is able to serve ALLTEL Kentucky's territory today, as AT&T Broadband successfully serves Lexington from Louisville notwithstanding that it transports to and from Louisville, and as AT&T Broadband serves via a cable company readily poised and able to compete with other carriers.**

While AT&T Broadband admits that indirect interconnection facilities are already in place and operating, it then suggests that the Commission's decision in this matter will have significant consequences on competition in the Shepherdsville market. (AT&T

Broadband Brief, page 5.) This is mere fabrication on the part of AT&T Broadband. It is (and admits to be) currently receiving and exchanging traffic in Shepherdsville by means of indirect interconnection through the BellSouth tandem. (AT&T Broadband Brief, page 7.)

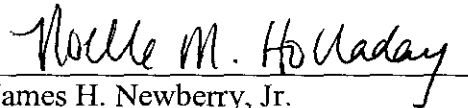
AT&T Broadband argues that it cannot compete without the requested relief. (AT&T Broadband Brief, page 5.) The reality, however, is that AT&T Broadband as a cable company is well positioned and able to compete and is competing for telephone business. AT&T Broadband admitted that it has approximately 20,000 customers in Louisville alone where it competes with BellSouth (Transcript of Sered Examination, page 19, line 20) and approximately 2,000 customers in Lexington (Transcript of Sered Examination, page 17, lines 6-7). It is, therefore, disingenuous for AT&T Broadband to contend that it *must* have certain relief in order to compete. Further, AT&T Broadband, while competing with other carriers, has the advantage of virtually no regulation and has no obligations under §251(c) of the Act with respect to unbundling its network or allowing use of its network at hypothetical forward looking costs that are far below the ILECs' real costs. (47 U.S.C. §251.) Similarly, cable companies like AT&T Broadband are not required to provide their services for resale at discounted rates as are ILECs. Thus, the Commission should reject any attempt by AT&T Broadband to force the costs of its business plan and switch location decision upon ALLTEL Kentucky. The simple truth is that AT&T Broadband (or its predecessor) chose to place its switch in Louisville (Transcript of Sered Examination, page 14, lines 10-12), knowing that it would then need to transport calls to and from its customers wherever located.

Indeed, despite its claim that it should not pay to transport traffic to and from its distant switch location because it would be precluded from competing, AT&T Broadband is in fact transporting calls at its expense to and from places as far away as Lexington and is doing so economically and successfully. AT&T Broadband's own witness stated that AT&T Broadband transports calls, at its sole expense, to and from its Louisville switch and Lexington, which is over eighty (80) miles of transport (Transcript of Sered Examination, page 16, line 20) and that AT&T Broadband is nonetheless successfully competing in Lexington (Transcript of Sered Examination, page 17, lines 14-20). By way of comparison, with respect to Louisville and Zoneton and in this case, AT&T Broadband would be required to bear the expense of less than three (3) miles of transport.

While this three (3) miles of transport may be inconsequential to AT&T Broadband, it is very consequential to ALLTEL Kentucky and every independent local exchange carrier which has obligations under the Act to offer the same arrangements to any and all other carriers who would demand them. Were the Commission to force these transport costs on ALLTEL Kentucky, the decision would be requiring ALLTEL Kentucky to bear costs that it does not currently incur and does not recover associated with transporting to any CLEC no matter where that CLEC decided to place its switch. Thus, while failure to grant the relief requested by AT&T Broadband would have no impact on competition as AT&T Broadband is already currently competing, granting the relief would have negative consequences on ALLTEL Kentucky and other ILECs.

In conclusion, neither the Interconnection Agreement nor applicable law (nor simple logic) dictates that ALLTEL Kentucky should have to pay to transport traffic outside of its network. This decision neither denies AT&T Broadband indirect interconnection nor prohibits it from competing in ALLTEL Kentucky's territory as it is in fact able to do today. Thus, the record in this matter, together with all applicable law, requires that the Commission deny the relief requested by AT&T Broadband.

Respectfully submitted,

  
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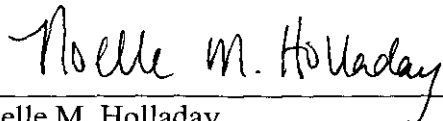
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It is hereby certified that a copy of the foregoing was served on the following by  
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